SOUTHERN CALIFORNIA MOTORCYCLE CLUB, INC.
SIERRA CLUB

IBLA 79-52 Decided August 17, 1979

Appeal from a decision of the Bakersfield, California, District Manager, Bureau of Land Management, rejecting in part and approving in part special recreation use permit CA 060-SR7-12UU.

Affirmed.

1. Public Lands: Special Use Permits – Special Use Permits

   The issuance of special use permits is discretionary and BLM may properly reject a permit application if the use identified is inconsistent with BLM's objectives, responsibilities and programs for managing the public lands. BLM may propose alternatives or impose restrictions or stipulations in order to issue a permit consistent with its responsibilities.

2. Applications and Entries: Vested Rights

   The filing of an application does not itself create a vested property interest or right. It creates at most merely a hope or expectation.

3. Federal Employees and Officers: Authority to Bind Government

   Reliance on erroneous or incomplete information provided by Federal employees does not create any right not otherwise authorized by law.

4. Environmental Quality: Generally -- National Environmental Policy Act: Generally

The Secretary of the Interior is obligated to support and implement the national policy expressed by Congress in the National Environmental Policy Act of 1969.

APPEARANCES: James R. Hooper, Southern California Motorcycle Club, Inc.; Laurens H. Silver, Esq., and Deborah S. Reames, Sierra Club Legal Defense Fund, Inc.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

The Southern California Motorcycle Club, Inc. (SOCAL) and the Sierra Club have appealed the September 28, 1978, decision of the Bakersfield, California, District Manager, Bureau of Land Management (BLM), rejecting in part and approving in part SOCAL'S application for a special recreation use permit, CA 060-SR7-12UU. The purpose of the permit was to allow SOCAL to hold a hare and hound motorcycle race in the Olancha Open Area of Inyo County, California, on October 22, 1978. 1/ The positions asserted by the two appellants are adverse to one another.

In May 1978, the Ridgecrest Resource Area Office, BLM, discovered that SOCAL was planning the October 22, 1978, race and that the race was not on the BLM 1978 schedule of races. Upon investigation, the Area Manager learned that a race proposal had been submitted for consideration as part of the American Motorcycle Association (AMA), District 37, 1978 multiple events application. However, when BLM notified AMA, District 37, in November 1977 of the race dates and locations reserved for 1978, the SOCAL race was not included on the list. Neither AMA nor SOCAL was specifically notified that BLM had not approved the Olancha Open Area race. Consequently, the Bakersfield District Manager decided to allow the race subject to receipt and approval of the proper application and documentation from SOCAL and with the condition that it be run on the same course as a 1977 race because of the shortened review period. BLM notified SOCAL of this decision by letter dated June 28, 1978.

1/ Since the BLM decision was appealed, the approved action was suspended and thus no race was held on October 22, 1978, in the Olancha Open Area. 43 CFR 4.21(a). Therefore, with respect to the particular race, this case is moot. However the case represents a recurring problem. One race has been held in this area in each of the 3 previous years and BLM anticipates continued requests for races in this area. Consequently, the claims raised by both appellants will continue to be at issue and are appropriate for review.

SOCAL subsequently submitted its RV Special Recreation Use Permit application which the BLM Ridgecrest Area Manager acknowledged by letter dated July 13, 1978. In this letter BLM noted that it must receive by August 28 documentation of landowner consent and SOCAL's insurance policy. The letter specifically stated that failure to submit this documentation could result in denial of the application. BLM sent a second letter on July 14 specifying that Loop 2 of the 1977 course ran through sections 16 and 36 which are privately owned and that permission from the landowners was required.

SOCAL submitted its insurance policy but could not obtain the consent of the private landowner of section 16. Section 36 is stateowned and the State Lands Commission agreed to review the race proposal when notified by BLM. The District Manager then proposed a modification of the 1977 course to go around section 16 and proceeded to review SOCAL's application and prepare the necessary Environmental Analysis Record (EAR). The participating BLM staff included an outdoor recreation planner, the district archaeologist, a wildlife biologist and an environmental coordinator. The District Manager also asked Dr. David Whistler, Senior Curator in Vertebrae Paleontology at the Los Angeles County Museum of Natural History to provide information on paleontological areas on or near the race course. Both Dr. Whistler and archaeologist Isaac Eastvold of the Sierra Club were invited to accompany the BLM team to the course area to identify areas of concern and Dr. Whistler did do so. On September 12, 1978, the EAR was issued for comment by September 22 and mailed to interested parties.

The State Lands Commission then notified BLM that they wanted to thoroughly review the EAR and indicated that they could not make a decision on the use of state land until October 11.

BLM reviewed the comments received on the EAR and issued its decision on September 28. Copies were distributed to interested parties. BLM authorized SOCAL to conduct the race but restricted it to two laps over Loop 1 of the proposed course rather than allowing it to be run over Loop 2. The decision noted the following reasons for the BLM action:

1. The failure of the Southern California Motorcycle Club to provide proof of land owners consent as required by BLM Manual Supplement CSO 6260.

2. Possible destruction of archaeological resources of unknown significance along the Loop 2 course.

3. Possible degradation of wilderness values in areas where new trail results across the desert pavement.

[1] The Federal Land Policy and Management Act of 1976, section 302(b), 43 U.S.C. §§ 1701, 1732(b), authorizes the Secretary of the Interior to regulate the use of the public lands "through easements, permits, leases, licenses, published rules, or other instruments as [he] deems appropriate." Special use permits, though not explicitly authorized by any statutory provision, are issued under the general authority of the Secretary to administer the public lands. This allows beneficial use of the lands even though the specific purpose of the use is not set forth in statute. See 43 CFR 2920.0-2. 2/ The Board has held repeatedly that the issuance of a special use permit is discretionary. BLM may reject an application for such a permit if the use identified is inconsistent with BLM's objectives, responsibilities, and programs for managing the public lands. Donald J. Laughlin, 25 IBLA 41 (1976); Jerry Tecklin, 20 IBLA 308 (1975); Wyoming Highway Department, 14 IBLA 258 (1974); Allen M. Boyden, 2 IBLA 128, 131 (1971). Just as BLM may reject a permit when the proposed use would adversely affect the public interest, BLM may propose an alternative, restrict the permit's extent or require stipulations in order to issue a permit consistent with its responsibilities. Jerry Tecklin, supra at 310. See 43 CFR 2920.3.

In appealing this decision, SOCAL protested the BLM decision to restrict the race to one loop and claimed that it was improper for six reasons summarized as follows:

1. BLM is illegally regulating the recreational use of state and private lands when it denies SOCAL the use of such lands.

2. The four previous Environmental Analysis Reports of the Loop 2 area indicated that there were no archeological resources on Loop 2.

3. The 1977 race course which BLM "imposed on SOCAL (because of an alleged lack of funds to 'study' the 1978 course)" is confined to existing roads and trails. The suggested course deviation is unacceptable.

4. Points 2 and 3 of the BLM decision are vague and unreasonable.

5. The decision is unreasonable because sufficient notice was not given. The decision does not allow time for appeal. The BLM staff repeatedly assured SOCAL that Loop 2 would be permitted and SOCAL expended considerable time and funds in reliance thereon.

2/ Special recreation use permit requirements are now set forth in 43 CFR Subpart 8372. In addition, final regulations governing the management of off-road vehicle use on public lands were issued effective July 16, 1979. See 43 CFR Subpart 8340 (44 FR 34834, June 15, 1979).

6. BLM has violated SOCAL's constitutional rights.

As SOCAL suggests, BLM does not have the authority to regulate state or privately-owned property. However, contrary to SOCAL's claim, BLM's decision to deny use of Loop 2 avoids inappropriate regulation of such land. BLM may not allow a BLM-sanctioned activity to cross state or private lands without the owner's consent because to do so would improperly interfere with the landowner's property rights.

In this case, BLM could have denied SOCAL's application outright for failure to obtain the necessary consents. Instead, BLM attempted to find an alternative so that a special recreation use permit for the race could be approved. Specifically, BLM directly contacted the State Lands Commission for permission to authorize the race course across section 36 and proposed a modification to Loop 2 which would avoid privately-owned section 16. As the final decision attests, neither of these initiatives solved the basic problem.

Although it initially appeared that permission would be forthcoming from the State Lands Commission, BLM was informed that the Commission could not make a decision until October 11, 1978. This would have been almost 2 weeks after the September 22 date which BLM had initially set for its decision. To wait until then would not give SOCAL sufficient time to arrange the race and BLM concluded that it would be inadvisable to allow plans for a race on Loop 2 to proceed without the state's consent.

The previous EAR's analyzed the potential environmental impact of earlier races on the Olancha Open Area. On-site surveys conducted as part of the environmental review for the 1978 race revealed that the proposed modifications to the previous route for Loop 2 would cross archeological sites of unknown significance in section 21 3/ and therefore were unacceptable. In its summary of public comments on the 1978 EAR, BLM explained that

> knowledge of archaeological resources of the Olancha Open Area is inadequate to properly assess the significance of the large lithic scatter/workshop site to be potentially impacted by the race. Allowing adverse impacts to occur to this site is infeasible from the standpoint of the legal requirements of the National Historic Preservation Act (P.L. 89-665) and regulations promulgated thereunder. There is insufficient time for the required determination of eligibility for the National Register of Historic Places and the normal cultural resources review process.

3/ The discovered archeological resources are described on page 7 of the Environmental Analysis Record.

We assume that SOCAL intends its third claim to be that no new trails would result in the Loop 2 area because BLM restricted the race to the 1977 course which consists of existing roads and trails. Here, once again, we note that the 1977 course for Loop 2 crosses private and state lands and SOCAL did not obtain the owner's consent to the race. Thus BLM proposed a modification of Loop 2 and it is in the area of that modification that "possible degradation of wilderness values" may result from new trails. The EAR states:

> The portion of the race course proposed to avoid crossing the private lands in section 16, T. 17 S., R. 38 E., MDM crosses approximately 1/2 mile of previously undisturbed lands and follows approximately 1/2 mile of sand washes. Approaching from the northeast the proposed race course crosses nearly 1/2 mile of highly washed alluvial fan with short sections of poorly defined desert pavement.
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> It then crosses a broad sand wash for approximately 1/4 mile and 200 yards of fairly well defined desert pavement. The course returns to the former route down a major sand wash. Authorizing this race will result in another slow healing trail across this short section of desert pavement. [pp. 10-11.]

BLM had sufficient basis for its third reason.

For the reasons just discussed, we find that there is no merit to SOCAL's claim that points 2 and 3 of the BLM decision are vague and unreasonable.

Since consent was never obtained from the state or private owner of section 16 and modification of Loop 2 within a meaningful time frame proved unacceptable, BLM properly exercised its discretion in denying the special use permit as it related to Loop 2 of the course.

SOCAL also claims that the BLM decision was unreasonable because there was insufficient notice and time for appeal. We feel there is no basis for such a claim under the circumstances of this case. From the outset, BLM gave the SOCAL application special treatment. SOCAL was presumably aware of the time constraints when it filed its application but made little effort to ensure that all documentation was submitted in a timely fashion. The EAR, issued on September 12 and sent to SOCAL, clearly indicates that one of the decision alternatives would allow only two laps over the first loop of the 1977 course. SOCAL did not offer any comments on the EAR. We also note that SOCAL's appeal was received by BLM on October 10 and that the District Manager's decision was reaffirmed by telephone to SOCAL on the same day.

[2, 3] SOCAL also states that BLM employees "repeatedly assured SOCAL that Loop 2 would be Permitted." We fail to see how SOCAL,

knowing that it had not submitted the consent documentation, could reasonably conclude that granting of the race permit was assured. At the beginning, SOCAL was told that its application would be accepted "pending receipt of the normal and proper application and documentation." BLM specifically told SOCAL that failure to submit insurance or landowner consent documentation could lead to denial of the application. SOCAL was aware that it was restricted to the 1977 course which passed through state and private lands. The filing of an application does not itself create a vested property interest or right. It creates at most merely a hope or expectation. Hunter v. Morton, 529 F.2d 645 (10th Cir. 1976); Hannifin v. Morton, 444 F.2d 200 (10th Cir. 1971); Gulf Oil Corp., 32 IBLA 13 (1977); Thomas E. Gaynor, 24 IBLA 320 (1976); Walt's Racing Assn., 18 IBLA 359 (1975). Further, as we have held before, reliance on erroneous or incomplete information provided by Federal employees does not create any right not otherwise authorized by law. Island Creek Coal Co., 35 IBLA 247 (1978); Joe I. and Celina V. Sanchez, 32 IBLA 228 (1977); Walt's Racing Assn., supra at n. 5.

Finally, we find no basis in the record for SOCAL's blanket assertion that its constitutional rights have been violated. Approval of a special recreational use permit is discretionary with BLM and the prescribed procedures were followed.

Sierra Club's appeal 4/ of the District Manager's decision asserts that the race should not be allowed even on a restricted basis. In its statement of reasons, Sierra Club claims that:

4/ The Sierra Club asserts that it is a "party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management" under the Board's interpretation of 43 CFR 4.410 in California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977). We agree. In that decision, we identified two factors which must be met if a particular appellant is to properly be considered an adversely affected party. These two factors are alleged use of the land by the appellants and their status and prior input into the decision-making process with respect to the lands. California Association of Four Wheel Drive Clubs, supra at 386.

Sierra Club maintains that its members have used the Olancha Open Area for "hiking, photography, and observation and enjoyment of the archeological, botanical, wildlife and numerous other unique resources of this land." It notes that it has long been interested in the protection of the California desert land and actively participated in the development of the Interim Critical Management Plan for the California desert. More specifically, Sierra Club directly participated in the present BLM decision in that various representatives commented on the Environmental Analysis Record and repeatedly raised objections to the issuance of a permit for the motorcycle race in Olancha. (Sierra Club notice of appeal, pp. 2-3).

1. The Olancha Race as proposed is inconsistent with BLM's Interim Critical Management Plan (ICMP) for off-road vehicle use in the California desert;

2. The EAR does not meet minimal BLM standards for environmental analysis;

3. The BLM manual requires a "High Intensity Analysis" of events such as this race; and

4. The 1976 Federal Land Policy and Management Act imposes an additional environmental analysis burden on proposed BLM actions which affect inventoried wilderness areas.

Sierra Club also refuted SOCAL'S arguments.

In support of its first argument, Sierra Club claims that the race course as approved goes beyond the designated "Competitive Event Area" as defined on the ICMP map and that impermissible widening of portions of the course will occur. We find, however, that the Sierra Club has mistakenly equated the boundaries of the Olancha Open Area with those of the BLM Competitive Event System in the Olancha region. As designated on the ICMP map, the Competitive Event System covers the Olancha Open Area and an area where vehicle use is restricted to existing vehicle routes. The approved race course is consistent with these designations in that those portions of the course which are outside the open area are on existing vehicle routes (EAR at 1). As Sierra Club correctly notes, under the competitive event system, races are permitted only in such "designated areas on designated courses in accordance with BLM procedures." See California Desert Vehicle Program, Sierra Club statement of reasons, exhibit 3. This is precisely what BLM has done in this instance.

In addressing ourselves to the Sierra Club claim of impermissible route widening, we first observe that the area and event designations on the ICMP map cannot be viewed in isolation, but rather must be read together to determine the extent of permissible activity. As Sierra Club notes, in areas restricted to existing vehicle routes, widening of those routes is prohibited. But in this case we must recognize that the area involved is both one restricted to existing vehicle routes and one where BLM has made a predetermination that competitive events are permissible. The portion of the race course in the restricted area is farthest from the starting and finishing points of the race loop and therefore is the area where the racers are least likely to be bunched up. Given the above, we find that the BLM approved route which is restricted to identified existing routes reasonably satisfies the limitations of the restricted area designation. The BLM comment in the EAR that "[t]here may be minor widening of existing roads and trails" (EAR at 10, emphasis added) applies to the

entire race course. Since the course as a whole will be narrowly defined with well-placed checkpoints to control the racers (EAR at 11-12), we hold that BLM approval was well within BLM's discretion as to this point.

[4] The Secretary of the Interior is obligated to support and implement the national policy expressed by Congress in the National Environmental Policy Act of 1969 (NEPA). 42 U.S.C. § 4331 (1976); Richard C. Hoefle, 24 IBLA 181, 183 (1976); A. Helander, 15 IBLA 107, 109 (1974); Allan R. Hallock, 13 IBLA 13 (1973). As part of that obligation NEPA gives authority to the Secretary to make threshold determinations as to whether contemplated actions are "major federal action[s] significantly affecting the quality of the human environment" and therefore as to whether full environmental impact statements are necessary. Hanly v. Mitchell, 460 F.2d 640, 644 (2nd Cir.), cert. denied 409 U.S. 990 (1972). In exercising this authority, BLM is obligated to develop a reviewable record reflecting consideration of all relevant factors. Id. at 647-48.

BLM policy requires that environmental analysis be conducted for every Bureau action and BLM has adopted detailed guidelines making that analysis. See BLM Manual section 1790-92. The BLM EAR serves as the record of environmental analysis precedent to the threshold determination as to whether a full environmental impact statement should be prepared.

Sierra Club contends that the analysis done for the Olancha race was inadequate according to BLM guidelines. We feel, however, that the Sierra Club challenge in reality goes to the degree of review required. In that regard, the BLM Manual specifies that "[a]s a general rule, the intensity of analysis should be commensurate with the anticipated impact of the decision on the environment." BLM Manual section 1791.11(C). The depth of the analysis at this stage in the overall environmental review process is left to the discretion of the responsible BLM official so long as it is sufficient to logically determine or support the conclusion arrived at during the review. (BLM Manual 1791.11(B)). Sierra Club advocates that a more intensive review should have been done and that greater weight should have been given to the impact on the area's ecological resources.

The fact that Sierra Club experts espouse different methodology and hold different opinions as to impacts does not necessarily mean that the BLM EAR does not adequately weigh the factors in this case. The environmental review process is one of balancing. Since the public lands are managed under a multiple use concept, BLM not only must weigh the impact of its actions on ecological resources but also must consider appropriate recreational uses as well. 43 U.S.C. § 1781 (1976).

The fact that Sierra Club has been able to present on appeal additional data as to the identified impacts which is arguably relevant to the environmental analysis does not mean that the EAR does not adequately support the decision in this case. The record reflects that BLM followed the systematic procedure set forth in the BLM Manual including interdisciplinary team analysis, on-site inspection, and consultation with outsiders. The EAR was made available for comment and the comments received were considered and addressed as part of the final decision. Approval of the race did not depart from existing policy since the Olancha Area is designated as appropriate for off-road vehicle races. Appropriate mitigation factors were identified and applied to the approved course in order to lessen any adverse impact to ecological resources. Moreover, the prior EAR's, prepared for the same basic route, are also correctly considered as part of the record which BLM has before it. We hold that BLM properly exercised its responsibilities. 5/

We fully agree with the Sierra Club that the proposed Olancha race required a "High Intensity Analysis" under BLM procedures and note that Sierra Club has identified those considerations appropriate in determining whether high intensity analysis is required. However, we disagree with Sierra Club's assertion that such an analysis was not done. The BLM Manual, section 1791.11D1, describes the requirements for high intensity analysis as follows:

> 1. High Intensity Analysis. An interdisciplinary team approach is to be used for high intensity environmental analysis. The key to interdisciplinary analysis is free discussion by the team in looking at a problem or aspect of a system together. To lend fuller understanding of the proposed action and possible impacts, field inspections are encouraged. If appropriate, the environmental analysis should be reviewed by individuals other than team members to assure inclusion of all applicable points of view. Input from recognized non-Bureau experts, public and private, is desirable (e.g., the USGS Regional Mining Supervisor is, by regulation, a member of the interdisciplinary team, pursuant to 43 CFR 23).
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> a. The size and membership of the team is to be determined by the responsible official. Representation on the team must assure adequate professional expertise of the

5/ The Olancha race was not held on October 22, 1978, because of the appeals of the BLM decision and thus the harm predicted by Sierra Club did not occur. If off-road vehicle races are contemplated in the future in the Olancha area, BLM should consider the additional information provided by Sierra Club in this appeal during the environmental analysis process.

> physical and natural sciences, social and economic sciences, and environmental design arts as required by the National Environmental Policy Act, Section 102.
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> b. When constrained by circumstances, such as manpower limitation, priority should be given to analyze as many proposals of different types of actions on an interdisciplinary basis. These analyses may then be used as models for similar types and categories of actions with a lesser number of team participants. [Emphasis added.]

An interdisciplinary team consisting of a recreation planner, archaeologist, biologist, and environmental coordinator prepared the Olancha race EAR. A field inspection was made. Comment from outside BLM was specifically solicited on the EAR and those comments evaluated prior to BLM's decision. Input from non-Bureau experts was requested directly from Dr. Whistler of the Los Angeles County Museum of Natural History and the State Lands Commission as previously indicated. We believe that BLM clearly followed the High Intensity Analysis approach.

Sierra Club's final claim is that BLM has not carried out its responsibilities under section 603 of the Federal Land Policy and Management Act in that BLM has not considered in sufficient detail whether approval of the race course in a wilderness study area would impair the suitability of the area for preservation as wilderness or cause unnecessary or undue degradation. BLM specifically addressed this point in the EAR and elaborated on it in its Summary Analysis of Public Comments on the EAR. As noted there, the issue before BLM was not whether off-road vehicle events should occur in a potential wilderness study area but rather whether the particular event as proposed with the identified potential impacts would impair the suitability of the area as wilderness. More particularly, if we look to the definition of wilderness in the Wilderness Act, the relevant characteristic for this discussion is that of an area "which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." 16 U.S.C. § 1131(c) (1976). Wilderness classification thus does not require that there be absolutely no evidence of human activity. BLM concluded that "due to the rugged terrain, [the] signs of man's work are hidden from view of the casual observer and the overall impression of the landscape is one of naturalness. Although the area has been designated 'open' to unrestricted vehicle use . . ., it remains primarily affected by the forces of nature." (EAR at 8). Sierra Club did not present any evidence which specifically refutes that finding. We hold again that BLM has properly exercised its responsibilities.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge